

Federal Communications Commission

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington D. C. 20554
SEP 23 6 32 PM '92RECEIVED BY
MM Docket No. 92-155

In the Matter of

Amendment of Section 73.202(b), RM-8020
Table of Allotments,
FM Broadcast Stations.
(Blair, Nebraska; Storm Lake,
Perry, and Sac City, Iowa)NOTICE OF PROPOSED RULE MAKING
AND ORDER TO SHOW CAUSE

Adopted: July 2, 1992;

Released: July 23, 1992

Comment Date: September 15, 1992

Reply Comment Date: September 30, 1992

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Sunrise Broadcasting of Nebraska, Inc. ("petitioner"), requesting the substitution of Channel 268C3 for Channel 292A at Blair, Nebraska, and the modification of Station KBWH(FM)'s license to specify operation on the higher class channel. To accommodate the allotment of Channel 268C3 to Blair, petitioner also requests the modification of Station KAYL's license by substituting Channel 269C1 for Channel 268C1 at Storm Lake, Iowa, the modification of Station KDLS-FM's license by substituting Channel 286A for Channel 269A at Perry, Iowa, and the substitution of Channel 248A for unoccupied and unapplied for Channel 286A at Sac City.¹

2. Petitioner states that Blair, the seat of Washington County, is a growing community with a 1990 U.S. Census population of 6,860 persons. It points out that Station KBWH(FM) is the community's only local aural transmission service and that modifying its license to specify Class C3 facilities would enable it to increase its listening audience from 24,843 persons to 67,909 persons. Petitioner also states its intention to reimburse the licensees of Stations KAYL and KDLS-FM for the reasonable costs associated with the change in operating channels.

3. We believe the public interest would be served by proposing the substitution of Channel 268C3 for Channel 292A at Blair, Nebraska, since it could provide Blair with its first local wide coverage area FM service and enable Station KBWH(FM) to expand its service area. As requested, we will also propose to modify Station KBWH(FM)'s license to specify operation on the higher powered channel. Petitioner recognizes that its request constitutes a nonadjacent channel upgrade and that its station's license may not be modified should another party express an interest in applying for Channel 268C3. Therefore, it proposes that Channel 247C3 be allotted to Blair to accommodate any such competing interests which may be filed. See Section 1.420(g) of the Commission's Rules.

4. Channel 268C3 can be allotted to Blair in compliance with the Commission's minimum distance separation requirements with a site restriction of 17.8 kilometers (11.1 miles) northwest to accommodate petitioner's desired transmitter site. Channel 247C3 can be allotted to Blair with a site restriction of 22.1 kilometers (13.7 miles) northwest to avoid short-spacings to Stations KZKX, Channel 245C1, Seward, Nebraska, KDMI, Channel 247C1, Des Moines, Iowa, and to the reference coordinates for Channel 249C1 at Nebraska City, Nebraska, reserved for Station KNCY-FM. Channel 286A can be allotted to Perry at the licensed site of Station KDLS-FM and Channel 269C1 can be allotted to Storm Lake at the licensed site of Station KAYL. Channel 248A can be allotted to Sac City without the imposition of a site restriction.²

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Blair, Nebraska	292A	268C3
Perry, Iowa	269A	286A
Sac City, Iowa	286A	248A
Storm Lake, Iowa	268C1	269C1

6. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Northwest Iowa Broadcasting Corp. ("Northwest"), licensee of Station KAYL, Storm Lake, Iowa, and Perry Broadcasting Co. ("Perry"), licensee of Station KDLS-FM, Perry, Iowa, SHALL SHOW CAUSE why their licenses SHOULD NOT BE MODIFIED to specify operation on Channels 269C1 and 286A, respectively, as proposed herein instead of their present Channels 268C1 and 269A, respectively.

7. Pursuant to Section 1.87 of the Commission's Rules, Northwest and Perry may, not later than **September 15, 1992**, file a written statement showing with particularity

¹ Petitioner proposed the substitution of Channel 265A for Channel 286A at Sac City. However, using the coordinates proposed by the petitioner for Sac City, the allotment would be short-spaced to the pending application of Minnesota-Iowa Christian Broadcasting, Inc. (BPH-911004ME) for Channel 264C3 at Eagle Grove, Iowa. Therefore, we are substituting Channel 248A for consideration at Sac City since it can be allotted without conflicting with any proposed allotment or pending application. See, e.g., *Thomasville, Alabama*, 5 FCC Rcd

7046 (1990) and *Warrenton, Georgia*, 6 FCC Rcd 5714 (1991).

² The coordinates for Channel 268C3 at Blair are North Latitude 41-38-52 and West Longitude 96-17-55. The coordinates for Channel 247C3 at Blair are 41-42-20; 96-17-22. The coordinates for Channel 286A at Perry are 41-49-58; 94-02-15. The coordinates for Channel 269C1 at Storm Lake are 42-38-05; 95-10-10. The coordinates for Channel 248A at Sac City are 42-25-12; 95-00-18.

why their licenses should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Northwest and/or Perry to furnish additional information. If Northwest and/or Perry raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Northwest and Perry will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

8. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Notice of Proposed Rule Making and Order to Show Cause* to the licensees, as follows: Northwest Iowa Broadcasting Corp., Station KAYL, 604 - 1/2 Lake Avenue, Storm Lake, Iowa 50588, and Perry Broadcasting Co., Station KDLS-FM, P.O. Box 548, Perry, Iowa 50220.

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before **September 15, 1992**, and reply comments on or before **September 30, 1992**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Howard J. Braun, Esq.
Rosenman & Colin
1300 - 19th Street, N.W.
Washington, D.C. 20036
(Counsel to petitioner)

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction

of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.